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AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SPAIN ON SOCIAL SECURITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SPAIN ON SOCIAL SECURITY WHICH CONSISTS OF TWO SEPARATE INSTRUMENTS, PURSUANT TO 42 U.S.C. 433(e)(1)

APRIL 22, 1987.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

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To the Congress of the United States:

Pursuant to Section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (P.L. 95–216, 42 U.S.C. 433(e)(1)), I transmit herewith the Agreement between the United States of America and Spain on Social Security which consists of two separate instruments. The Agreement was signed at Madrid on September 30, 1986.

The U.S.-Spain Agreement is similar in objective to the social security agreement already in force with Belgium, Canada, the Federal Republic of Germany, Italy, Norway, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to overcome the problems of gaps in protection and of dual coverage and taxation for workers who move from one country to the other.

I also transmit for the information of the Congress a comprehensive report prepared by the Department of Health and Human Services, which explains the provisions of the Agreement and provides data on the number of persons affected by the Agreement and the effect on social security financing as required by the same provision of the Social Security Act.

The Department of State and the Department of Health and Human Services join with me in commending the U.S.-Spain Social Security Agreement and related documents.

RONALD REAGAN

THE WHITE HOUSE, *April 21, 1987.*

AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND SPAIN
ON SOCIAL SECURITY

The United States of America and Spain,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

General Provisions

Article 1

1. For purposes of this Agreement, the expressions and terms listed below shall have the following meaning:

(1) "Contracting State" means the United States of America or Spain;

(2) "Territory" means,

as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and,

as regards Spain, the Spanish national territory;

(3) "National" means,

as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and,

as regards Spain, a national of Spain as defined in Title I of Book I of the Spanish Civil Code;

(4) "Laws" means the laws and regulations specified in Article 2 which are in force in the territory of either Contracting State;

(5) "Competent Authority" means,

as regards the United States, the Secretary of Health and Human Services, and,

as regards Spain, the Ministry of Labor and Social Security;

(6) "Agency" means,

as regards the United States, the Social Security Administration, and,

as regards Spain, the agency or authority responsible for applying the laws specified in Article 2, paragraph 1, subparagraph A;

(7) "Liaison Agency" means,

as regards the United States, the Social Security Administration, and,

as regards Spain, the agency in charge of coordinating the organizations involved in the application of this Agreement;

(8) "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

(9) "Benefit" means any cash amount payable under the laws specified in Article 2.

2. Any other expression or term used in both this Agreement and the laws of a Contracting State shall, for that Contracting State, have the same meaning as under those laws.

Article 2

1. The present Agreement shall apply :

A. As regards Spain,

(1) to the legal provisions of the General System of Social Security as they relate to:

(a) Provisional or permanent disability due to ordinary illness or non-work-related injury.

(b) Old age.

(c) Death and Survivorship due to ordinary illness or nonwork-related injury.

(2) to the legal provisions of the following Special Systems with respect to the contingencies referred to in subparagraph A, clause (1):

(a) Agricultural Workers.
(b) Maritime Workers.
(c) Coal Miners.
(d) Railroad Workers.

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(e) Domestic Employees.
(f) Self-employed Persons.
(g) Commercial Representatives.
(h) Students.
(i) Artists.
(j) Authors.
(k) Bullfighters.
(l) Professional Soccer Players.

B. As regards the United States of America,

to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(1) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections.

(2) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters.

2. This Agreement shall apply also to future laws which supplement or amend the laws specified in the preceding paragraph.

Article 3

1. Unless otherwise provided, this Agreement shall apply to:

(a) Persons who are or have been subject to the laws of one or both of the Contracting States.

(b) Other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

2. A person who is or has been subject to the laws of a Contracting State and who resides within the territory of the other Contracting State shall, together with his dependents, receive equal treatment with the nationals of the other Contracting State in the application of laws specified in Article 2 of the other Contracting State regarding entitlement to and payment of benefits.

3. Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

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PART II

Provisions on Coverage

Article 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. A person who would otherwise be covered under the laws of both Contracting States with respect to self-employment shall be subject to the laws of only the Contracting State of which he is a resident.

Article 5

1. Where a person who is covered under the laws of one Contracting State in respect of work performed for a firm in the territory of that Contracting State is sent by that firm to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State as if he were employed in its territory, provided that the period of work in the territory of the other Contracting State is not expected to exceed five years. If the period of work is prolonged due to unforeseen circumstances for more than five years, the laws of the first Contracting State shall continue to apply for a new period of not more than one year, provided that the Competent Authority of the other Contracting State has given its consent. This extension must be requested before the termination of the initial period of five years.

2. Traveling employees of air transportation companies who perform work in the territories of both Contracting States and who would otherwise be covered under the laws of both Contracting States shall, with respect to that work, be subject to the laws of only the Contracting State in the territory of which the firm has its home office. However, if such employees reside in the territory of the other Contracting State, they shall be subject to the laws of only that State.

3. A person employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the Contracting State whose flag the vessel flies. A vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Article 6

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first State. For the purposes of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.

Article 7

The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of Articles 4, 5 and 6 with respect to any person or category of persons.

Article 8

In determining eligibility for voluntary or optional coverage in accordance with Spanish laws, periods of coverage completed by a person under United States laws shall be considered as periods of coverage completed under Spanish laws if the person fulfills the other requirements provided in Spanish laws.

PART III

Special Provisions on Benefits

Chapter I
Application of Spanish Laws

Article 9

Where a worker has been subject to the laws of both Contracting States, benefits shall be granted under the following conditions:

1. If the person satisfies the conditions required by Spanish laws for a right to benefits, the Spanish agency shall determine the amount of the benefit according to the laws which it applies taking into account only the periods of coverage completed under its laws.

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2. If the person does not satisfy the period-of-coverage requirements under Spanish laws, the benefits which he may claim shall be paid according to the following rules:

(a) The periods of coverage completed under each of the laws of the two Contracting States, as well as the periods recognized as equivalent, shall be totalized, provided they do not coincide, both for the determination of the right to benefits as well as for the maintenance or recovery of this right.

(b) Taking into account the totalization of periods as described above, the Spanish agency shall determine, in accordance with its own laws, if the person meets the requirements for a benefit.

(c) If a right to a benefit is acquired, the amount shall be determined as if all the periods of coverage, totalized according to the rules established in subparagraph (a), had been completed exclusively under its own laws (theoretical pension). When the amount of the theoretical pension thus determined is less than the minimum pension provided at that time under Spanish laws, such minimum shall be considered as the theoretical pension.

(d) The amount of the benefit actually due the person shall be established by reducing the amount determined in subparagraph (c) based on the ratio of the periods of coverage completed under Spanish laws to the total of the periods totalized according to subparagraph (a) (pro rata pension).

3. Periods of coverage shall be totalized under this Article according to the following rules:

(a) A quarter of coverage under United States laws shall equal 91 days of contributions under Spanish laws.

(b) The periods of coverage resulting from the preceding conversion shall not be totalized under Spanish laws to the extent they coincide with periods of contributions under Spanish laws.

Article 10

1. For purposes of the application, where appropriate, of the principle of totalization, if the total duration of the periods of coverage acquired under Spanish laws is less than 1 year, and if, taking into account only those periods, no right to benefits is derived under such laws, the Spanish agency shall not grant benefits based on such periods.

2. The provisions of paragraph 1 shall not apply if a right to benefits under Spanish laws may be acquired by totalizing periods of coverage of less than 1 year in both Contracting States.

3. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Article 11

1. If Spanish laws establish as a condition for the award of certain benefits that periods of coverage be completed in a profession subject to a special system or in a specific profession or occupation, the periods completed under the laws of the other Contracting State shall not be taken into account for the awarding of these benefits unless those periods were completed under a corresponding system or, failing that, in the same profession or occupation.

2. If, taking into account the periods thus completed, the interested person does not meet the required conditions for entitlement to these benefits, these periods shall be taken into account for the awarding of benefits under the general system.

Article 12

1. Benefits awarded in accordance with this Chapter shall be revalued with the same frequency and in the same amount as provided in Spanish internal laws.

2. Pro rata pensions referred to in Article 9, paragraph 2(d), shall be converted by reducing the amount of the revaluation according to the same rule of proportionality cited in that Article.

Article 13

In order to determine the extent of a worker's disability, the Spanish agency shall take into account medical reports and administrative data forwarded by the agency of the other Contracting State. Nevertheless, that agency shall have the right to arrange for the worker to be examined by a physician of its choice.

Article 14

1. To obtain a benefit in the cases set forth in Article 9, paragraph 2, the requirement of Spanish laws that a person be in a situation deemed equivalent to registered (situacion asimilada al alta) shall be considered to have been met if the person concerned is covered under United States laws or is in receipt of a benefit in accordance with United States laws.

2. For purposes of paragraph 1, a person shall be considered to be covered under United States laws if the person is insured for a benefit under such laws or has credit for at least 1 quarter of coverage under such laws during a period of 12 calendar quarters ending with the calendar quarter in which the insured event occurs according to Spanish laws.

Article 15

1. In calculating the benefit computation base, the Spanish agency shall apply its own laws.

2. When all or part of the contributory period elected by the applicant for the calculation of his benefit computation base has been completed under United States laws, the Spanish agency shall determine the aforementioned computation base by reference to the minimum contribution base in force in Spain during that period or fraction thereof, for workers of the same occupational or professional category to which the person concerned belonged while in Spain.

Article 16

The lump-sum death benefit provided by Spanish laws shall be granted solely on the basis of those laws and in conformity with the requirements and conditions of those laws.

Chapter II

Application of United States Laws

Article 17

1. Where a person has sufficient quarters of coverage under United States laws to satisfy the requirements for entitlement to benefits, the agency of the United States shall determine the amount of the benefit according to the laws which it applies taking into account only the quarters of coverage completed under its laws.

2. Where a person does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, including a lump-sum death benefit, but has completed at least six quarters of coverage under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Chapter, periods of coverage which are credited under Spanish laws and which do not coincide with periods of coverage already credited under United States laws.

3. In determining eligibility for benefits under paragraph 2 of this Article, the agency of the United States shall credit one quarter of coverage in each calendar year for every 91 days of contributions in that calendar year certified by the agency of Spain. If the conversion provided in the preceding sentence produces a remainder, that remainder shall be treated as one additional quarter of coverage. However, no quarter of coverage shall be credited under this paragraph for any calendar quarter already credited as a quarter of coverage under United States laws, nor shall the total number of quarters of coverage to be credited for a year exceed four.

4. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Article 18

Entitlement to a benefit under United States laws which results from Article 17, paragraph 2, shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of that paragraph.

Article 19

Where entitlement to a benefit under United States laws is established according to the provisions of Article 17, paragraph 2, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on:

I. The person's average earnings credited exclusively under United States laws.

II. The ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

PART IV

Miscellaneous Provisions

Article 20

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an Administrative Arrangement.

Article 21

The Competent Authorities of the two Contracting States shall:

(a) Establish Administrative Arrangements for the application of the present Agreement.

(b) Determine their respective liaison agencies whose functions shall be established in the Administrative Arrangement.

(c) Communicate to one another the measures adopted for the application of this Agreement.

(d) Notify one another of laws and regulations which modify those listed in Article 2.

Article 22

1. Disagreements between the Competent Authorities of the two Contracting States regarding the interpretation or application of this Agreement and its Administrative Arrangements shall, as far as possible, be settled by the Competent Authorities.

2. If such a disagreement cannot be resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

Article 23

1. Correspondence between the Competent Authorities, agencies, liaison agencies and individuals, as well as applications or documents, may be in English or Spanish.

2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular or other authorities.

Article 24

1. Any application, appeal or other document which according to the laws of a Contracting State must be submitted within a specified period to an agency of that Contracting State, but which is instead submitted within the same period to the agency of the other Contracting State, shall be considered to have been submitted on time. In such case, the agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

2. Any claim for benefits presented in accordance with the laws of one Contracting State shall be considered as a claim for the corresponding benefits under the laws of the other State, in conformance with conditions and limitations established in an Administrative Arrangement.

Article 25

The benefit of exemptions from or reductions of taxes, stamps, notarial or registration fees or other similar charges provided in the laws of one of the Contracting States for certifications and documents which are required in application of the laws of that State, shall be extended to documents and certifications issued in application of the laws of the other State or of this Agreement.

Article 26

1. Payments due in accordance with this Agreement may be validly made in the currency of the Contracting State whose agency is making the payment.

2. In case provisions restricting the transfer of currency are promulgated in either of the Contracting States, the two States shall immediately adopt measures necessary to guarantee the rights derived from this Agreement.

PART V

Transitional and Final Provisions

Article 27

1. In the application of this Agreement, consideration shall be given to periods of coverage under the laws of either Contracting State which occurred prior to the entry into force of this Agreement, in order to determine the right to benefits under this Agreement; except that neither State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.

2. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force. This Agreement shall not apply to rights settled by a lump-sum payment.

3. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

4. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force. Benefit rights which interested persons may have acquired prior to the entry into force of this Agreement may be reviewed upon application.

Article 28

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 29

This Agreement may be amended in the future by supplementary agreements which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 30

The Government of each of the Contracting States shall notify the other of the fulfillment of its statutory or constitutional requirements for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the exchange of notifications.

In witness whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

Done at Madrid on September 30, 1956, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of
the United States of America:

For the Government of
Spain:

ADMINISTRATIVE ARRANGEMENT
FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY
BETWEEN THE UNITED STATES OF AMERICA AND SPAIN

Pursuant to the provisions of Article 21(a) of the Agreement between the United States of America and Spain on Social Security, signed September 30, 1986, hereinafter referred to as the "Agreement", the Competent Authorities of both Contracting States have agreed on the following:

Chapter I

General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 2

1. The liaison agencies referred to in Article 21(b) of the Agreement shall be the following:

   a) For Spain: the National Social Security Institute.

   b) For the United States of America: the Social Security Administration.

2. The liaison agencies designated in the preceding paragraph shall agree on joint procedures, forms and other documents necessary for the application of the Agreement and this Administrative Arrangement.

Chapter II

Provisions on Coverage

Article 3

1. Where the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the agency of that Contracting State, upon request of the employer, employee or self-employed person, shall issue a certificate stating that the employee or self-employed person is covered by those laws. This certificate shall be proof that the named worker is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued

   a) In Spain: by the National Social Security Institute.

   b) In the United States of America: by the Social Security Administration.

3. The agency of a Contracting State which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate to the liaison agency of the other Contracting State as needed by the latter agency.

4. Where the detachment referred to in Article 5, paragraph 1, of the Agreement is extended for unforeseen reasons beyond 5 years, the employer, with the consent of the employee, may apply to the Competent Authority of the Contracting State from which the employee was sent for special authorization to continue coverage of the employee under the laws of that Contracting State. Upon approval, that Competent Authority shall transmit the application for the extension to the Competent Authority of the other Contracting State for its approval, as provided for in the aforementioned Article.

Chapter III

Special Provisions on Benefits

Article 4

1. An application for benefits presented in accordance with the laws of one Contracting State shall be considered as an application for the corresponding benefits under the laws of the other Contracting State in accordance with Article 24, paragraph 2, of the Agreement, if the applicant presents the application in writing and either requests that it be considered an application under the laws of the other Contracting State or, if the applicant has not specifically restricted the application to benefits under the laws of the first State, provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. The provisions of the Agreement shall apply to an application for benefits only if the application is filed on or after the date the Agreement enters into force.

Article 5

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 4 of this Administrative Arrangement shall inform the liaison agency of the other Contracting State of this fact without delay and provide such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

2. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the worker, the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

3. In the case of an application for disability benefits, the agency shall transmit all available medical evidence concerning the disability.

4. The agency of either of the Contracting States which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

Chapter IV

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon by the Contracting States pursuant to Article 2 of this Administrative Arrangement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a manner to be agreed upon.

Article 8

1. When, in the judgment of an agency, medical evidence is necessary to determine or review under its laws the disability of an applicant, that agency may request a new medical examination, using a form to be established for such purpose.

2. The costs incurred for the medical examination provided for in the preceding paragraph shall be reimbursed by the agency that requests the examination.

Article 9

The agency of each Contracting State shall pay benefits due to beneficiaries under the Agreement without recourse to the agency of the other Contracting State.

Article 10

Unless otherwise authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Arrangement shall enter into force on the same date as the Agreement and shall have the same period of validity.

Done at Madrid on September 30, 1986, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of
the United States of America:

For the Government of
Spain:

REPORT TO CONGRESS
TO ACCOMPANY THE SOCIAL SECURITY AGREEMENT
BETWEEN THE UNITED STATES AND SPAIN

I. INTRODUCTION

The social security agreement between the United States and Spain is intended to provide limited coordination of the old-age, survivors, and disability insurance (OASDI) programs of the two countries. The agreement is similar in content and objective to agreements already concluded between the United States and Belgium, Canada, Italy, Norway, Sweden, Switzerland, the United Kingdom and West Germany.

The U.S.-Spanish agreement consists of two separate instruments: (1) a principal agreement setting forth the basic rules for coordinating the two countries' social security systems; and (2) an administrative arrangement establishing policies and procedures to implement the principal agreement. These two documents were signed by representatives of the U.S. and Spanish Governments on September 30, 1986, and are now being submitted to Congress for review in accordance with Section 233(e) of the Social Security Act.

The U.S.-Spanish agreement would eliminate dual coverage, the situation that now exists when a person from one country works in the other country and is covered under and required to pay contributions to the social security systems of both countries for the same work. In addition to eliminating dual coverage, the agreement would help prevent situations where workers suffer a loss of benefit rights merely because they have divided their careers between the two countries.

Accompanying this report are paragraph-by-paragraph explanations of the provisions of the principal agreement (Annex A) and related administrative arrangement (Annex B). A report required by Section 233 (e)(1) of the Social Security Act on the effect of the agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the agreement is also included (Annex C).

II. STATUTORY REQUIREMENTS

Section 233(c)(1) of the Social Security Act requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of the same work under the social security systems of the United States and the other country which is a party to the agreement, and for combining credits earned by a worker under the two systems for benefit eligibility purposes. In addition, the law stipulates that when eligibility for U.S. Social Security benefits is established on the basis of combined credits, the amount of the benefit payable must be based on the proportion of the worker's periods of coverage completed under title II of the Social Security Act. The U.S.-Spanish agreement includes these required provisions.

III. COVERAGE PROVISIONS

In conformity with Section 233(c)(1)(B) of the Social Security Act, Part II of the principal agreement sets forth rules designed to eliminate dual coverage and taxation of the same work under the U.S. and Spanish social security systems.

A. Rules Governing Employees

The rules which apply to employed persons provide that dual coverage under the laws of the United States and Spain would be eliminated generally by maintaining an employee's coverage under the system of the country where the work is performed and exempting the employee from compulsory coverage under the system of the other country.

Special rules would apply, however, for employees who are temporarily transferred by their employer in one country to work in the other country for a period of five years or less. In these cases, an employee who was covered in one country before his transfer would continue to be covered under that country's system and would be exempt from coverage in the other country. Thus, a person working in the United States who is temporarily transferred by his employer to Spain would only be covered under and pay contributions to the U.S. program, and he and his employer would be relieved of the additional burden of paying social security contributions to the Spanish program.

Other rules set forth in this Part would apply to persons employed by the Governments of the two countries and to persons employed in international air and ship transportation.

B. Rules Governing Self-Employed Persons

Part II also contains rules applicable to persons whose earnings from self-employment would be subject to compulsory coverage and contributions under the laws of both countries. Under these rules, a self-employed resident of Spain whose earnings would otherwise be dually covered will be covered only under the laws of Spain. A dually covered U.S. resident would be covered only under U.S. laws.

IV. BENEFIT PROVISIONS

Part III of the principal agreement establishes the basic rules for determining entitlement to and the amount of U.S. and Spanish benefits for persons who have worked in both countries. These benefit provisions are included pursuant to Sections 233(c)(1)(A) and (C) of the Social Security Act.

A. Provisions Applicable to the United States

1. Totalization of Periods of Coverage

Under the rules which apply to the United States, if a worker has credit for at least 6 quarters of coverage under the U.S. Social Security system, but not enough credits to qualify for a U.S. benefit, the worker's coverage credits from both countries could be totalized (i.e., combined) to permit him or her to qualify for a partial U.S. benefit. The benefit amount of a person who qualifies based on totalized credits would be proportional to the amount of coverage completed in the United States.

2. Converting Periods of Coverage

Part III of the agreement also establishes procedures to be followed in converting periods of coverage under the Spanish system into equivalent periods under the

U.S. system. Periods of coverage under the U.S. Social Security program are measured in terms of calendar quarters, while Spanish periods of coverage are measured in days of contributions. Under the agreement, the United States would credit one quarter of coverage in a calendar year for every 91 days of contributions certified for that year under the Spanish system. The United States, however, would not credit days of contributions under Spanish laws which fall within quarters of coverage already credited under the U.S. system.

2. Computation of U.S. Totalization Benefit Amounts

The amount of a U.S. benefit for which a person may qualify based on totalized periods of coverage depends on both the duration of the worker's coverage under U.S. Social Security and the level of his earnings. A detailed description of the totalization benefit computation procedure is contained in regulations of the Department of Health and Human Services (20 CFR 404.1918). The first step in the procedure is to compute a theoretical benefit amount as though the worker had worked a full coverage lifetime (i.e., a full career) under U.S. Social Security at the same earnings level as during his actual periods of U.S. covered work. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime the worker completed under the U.S. program. A coverage lifetime is defined in the regulations as the number of the worker's benefit computation years, i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

B. Provisions Applicable to Spain

1. Spanish Benefits

Spain provides old-age, survivors and disability benefits through several programs. A general social security system covers the majority of workers in the private sector, and numerous special systems cover other workers in specific occupational categories. In order to qualify for Spanish benefits, a worker must meet the applicable eligibility standards, including minimum length-of-coverage and recency-of-work requirements that are specified for each type of benefit. Benefits vary in amount depending on the length of the worker's covered employment or self-employment under the Spanish system, as well as the level of the worker's earnings.

2. Totalization of Periods of Coverage

The totalization provisions of the agreement apply to the Spanish social security laws which govern the general and special social security systems and which provide benefits on account of retirement or on account of death or disability not resulting from a work-related accident or illness.

Under the agreement, if a worker has at least one year of Spanish coverage, Spain would add U.S. quarters of coverage to periods of Spanish coverage in order to determine whether the worker meets the applicable minimum coverage and recency-of-work requirements for benefit eligibility under Spanish law. Spain would credit 91 days of coverage for each quarter of coverage certified by the United States, less any days within the quarter that are already credited under Spanish law.

Where eligibility is established based on combined U.S. and Spanish credits, Spain would compute a theoretical benefit amount as if the worker's U.S. periods of coverage had been completed under Spanish law. To determine the amount actually payable, the theoretical amount would be prorated by multiplying it by the ratio of the periods of coverage credited under Spanish law to the total periods credited in both countries.

C. Benefit Portability

Section 233(c)(2) of the Social Security Act permits agreements to contain provisions suspending the application of the alien nonpayment provisions of the Social Security Act (Section 202(t)) for persons residing in a foreign country with which the United States has an agreement in force. Spanish nationals outside the United States, including those residing in Spain, are already exempt from the nonpayment provisions of section 202(t)(1) in accordance with section 202(t)(2). However, citizens of other countries who reside in Spain may not be. The agreement, therefore, provides an exemption from the nonpayment provisions of section 202(t)(1) for insured persons and their dependents or survivors, regardless of their citizenship, if they reside in Spain.

Under section 202(t)(11), which was added by the Social Security Amendments of 1983, benefits generally may not be paid to nonresident aliens who first become eligible for title II dependent or survivor benefits after December 31, 1984, unless they satisfy certain U.S. residency requirements, or they are citizens or residents of a country with which the United States has a totalization agreement in force. Once the U.S.-Spanish social security agreement enters into force, citizens or residents of Spain will no longer be subject to this nonpayment provision.

The agreement would also guarantee that persons who reside in the United States could qualify for and receive Spanish benefits without restriction based on their nationality or place of residence. Diplomatic notes exchanged in 1965 and 1966 between the United States and Spain which provide for the payment of Spanish benefits to U.S. nationals while residing in third countries would not be affected.

V. OTHER PROVISIONS

Section 233(c)(4) of the Social Security Act authorizes agreements to contain other provisions not inconsistent with title II of the Act which are appropriate to carry out the purposes of the agreements. In accordance with this provision, the principal agreement and administrative arrangement contain a number of articles designed to permit the United States or Spain to render free or reimbursable assistance to the other country in implementing the agreement.

PRINCIPAL AGREEMENT	ANNOTATIONS AND COMMENTS
AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SPAIN ON SOCIAL SECURITY	This document is described as an "Agreement", with the understanding that it will enter into force for Spain as a formal treaty subject to parliamentary ratification and for the United States as an executive agreement under authority of section 233 of the Social Security Act. Upon entry into force, the Agreement will have the effect of law in both countries and will be binding on both countries.
The United States of America and Spain, Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:	

PRINCIPAL AGREEMENT

PART I

General Provisions

Article 1

1. For purposes of this Agreement, the expressions and terms listed below shall have the following meaning:

(1) "Contracting State" means the United States of America or Spain;

(2) "Territory" means,

as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and,

as regards Spain, the Spanish national territory;

(3) "National" means,

as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and,

as regards Spain, a national of Spain as defined in Title I of Book I of the Spanish Civil Code;

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Article 1.1 defines key terms used in the Agreement.

The term "Contracting State" means either the United States or Spain.

The definition of United States "territory" is identical to the definition of the United States in section 210(i) of the Social Security Act.

Spanish national territory includes Spanish territory on the Iberian peninsula, the Canary Islands, the Balearic Islands, the island of Alboran and the territories of Ceuta and Melilla.

Under section 101 of the Immigration and Nationality Act of 1952 (8 United States Code, section 1101 (aX22)), "the term national of the United States means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Those in category (B) include natives of American Samoa and Swain's Island.

Under Title I of Book I of the Spanish Civil Code, Spanish nationality is generally accorded to a person born of a Spanish parent, or born in Spain of non-Spanish parents if at least one of the parents was also born in Spain, and to other persons who are naturalized Spanish citizens in accordance with Spanish law.

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(4) "Laws" means the laws and regulations specified in Article 2 which are in force in the territory of either Contracting State;

(5) "Competent Authority" means,

as regards the United States, the Secretary of Health and Human Services, and,

as regards Spain, the Ministry of Labor and Social Security;

(6) "Agency" means,

as regards the United States, the Social Security Administration, and,

as regards Spain, the agency or authority responsible for applying the laws specified in Article 2, paragraph 1, subparagraph A;

(7) "Liaison agency" means,

as regards the United States, the Social Security Administration, and,

as regards Spain, the agency in charge of coordinating the organizations involved in the application of this Agreement;

ANNOTATIONS AND COMMENTS

The term "laws," as used in the Agreement, refers to the social security laws and regulations of each country as specified in Article 2.

"Competent Authority," as used throughout this Agreement, refers to the Government official or body in each country with ultimate responsibility for administering the social security program, including the provisions of the Agreement.

"Agency," as used in the Agreement, refers to the administrative body in each country responsible for taking and processing claims and making coverage determinations under each country's social security laws. The Social Security Administration (SSA) is the agency for the United States. However, the U.S. Internal Revenue Service's responsibility for determining Social Security tax liability in light of SSA coverage determinations under the Agreement is not affected.

In Spain, a number of separate offices are responsible for administering the benefit and coverage provisions of Spanish social security laws. Any one of these offices may be the "agency" for purposes of the agreement in a particular case. However, the National Social Security Institute, which is the Spanish liaison agency (see the annotation to article 1.7), will be the Social Security Administration's principal contact for purposes of implementing and administering the agreement.

"Liaison agency," as used in the Agreement, refers to the administrative body in each country that will have primary responsibility for coordinating the administration of the coverage and benefit provisions of the Agreement. As specified in article 2.1 of the Administrative Arrangement, the liaison agency in the United States will be the Social Security Administration, and in Spain it will be the National Social Security Institute.

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(8) "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

(9) "Benefit" means any cash amount payable under the laws specified in Article 2.

2. Any other expression or term used in both this Agreement and the laws of a Contracting State shall, for that Contracting State, have the same meaning as under those laws.

Article 2

1. The present Agreement shall apply :

A. As regards Spain,

(1) to the legal provisions of the General System of Social Security as they relate to:

(a) Provisional or permanent disability due to ordinary illness or nonwork-related injury.

(b) Old-age.

(c) Death and survivorship due to ordinary illness or nonwork-related injury.

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The term "period of coverage" means any period which is credited under the laws of either country for purposes of determining benefit eligibility, including periods of covered employment or self-employment.

"Benefit" refers to old-age, survivors, and disability benefits provided under the social security laws of either country. The term "benefit" also includes the lump-sum death payment under section 202(i) of the U.S. Social Security Act, but excludes special age-72 payments provided for certain uninsured persons under section 228 of the Social Security Act of the United States.

Each country shall assign to any undefined terms used in the Agreement the same meaning as they are given under its national laws.

Article 2.1 specifies the laws to which the Agreement applies.

The general social security system in Spain covers about 70 percent of industrial and service workers in the private sector. Numerous special systems cover other workers in specific occupational categories. The general system provides cash benefits on account of a worker's retirement, death or disability (including short-term cash sickness benefits and rehabilitation measures). It also provides unemployment benefits, family allowances, reimbursement for health care expenses as well as various social services. The special systems provide the same benefits, with certain exceptions. For example, self-employed workers generally are not eligible for short-term disability or unemployment benefits.

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(2) to the legal provisions of the following Special Systems with respect to the contingencies referred to in subparagraph A, clause (1):

(a) Agricultural Workers.
(b) Maritime Workers.
(c) Coal Miners.
(d) Railroad Workers.
(e) Domestic Employees.
(f) Self-employed Persons.
(g) Commercial Representatives.
(h) Students.
(i) Artists.
(j) Authors.
(k) Bullfighters.
(l) Professional Soccer Players.

B. As regards the United States of America,

to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(1) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections.

(2) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters.

2. This Agreement shall apply also to future laws which supplement or amend the laws specified in the preceding paragraph.

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The benefit provisions of the Agreement apply only to those provisions of Spanish law which deal with the general and special social security systems and which provide benefits on account of retirement or on account of death or disability not resulting from a work-related accident or illness. The coverage provisions of the Agreement apply to all the benefit programs under the general and special systems. As a result, a worker who is exempt from Spanish laws in accordance with Part II of the Agreement will be exempt, together with his employer, from paying Spanish social security contributions for all these programs. A worker who is subject only to Spanish laws by virtue of the Agreement will be exempt only from FICA and SECA contributions.

Article 2.1.B specifies the U.S. laws to which the Agreement applies. These are title II of the U.S. Social Security Act and the corresponding tax laws (the Federal Insurance Contributions Act and the Self-employment Contributions Act of 1954) and any regulations pertaining to those laws. However, the Agreement does not apply to Medicare provisions (section 226 and 226A of the Social Security Act) or provisions for special payments to uninsured individuals age 72 or over under section 228 of the Social Security Act. Persons to whom the Agreement applies who qualify independently for Medicare hospital insurance or age-72 payments will be entitled to receive such benefits.

The Agreement automatically applies to any future laws which amend provisions of the social security laws set forth in paragraph 1 of this Article.

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Article 3

1. Unless otherwise provided, this Agreement shall apply to:

   (a) Persons who are or have been subject to the laws of one or both of the Contracting States.

   (b) Other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

Article 3.1 specifies the categories of persons to whom the Agreement applies. These include persons currently working in covered employment or self-employment, as well as persons who have been credited with periods of coverage under the system of either country in the past. In addition, the Agreement applies to family members and survivors who derive rights from such persons.

2. A person who is or has been subject to the laws of a Contracting State and who resides within the territory of the other Contracting State shall, together with his dependents, receive equal treatment with the nationals of the other Contracting State in the application of laws specified in Article 2 of the other Contracting State regarding entitlement to and payment of benefits.

Article 3.2 provides that the persons to whom the Agreement applies who reside in one country will be accorded the same treatment regarding benefit rights under that country's social security laws as that country accords its own nationals. This provision is not intended to affect the coverage provisions of either country's laws, since these are dealt with specifically in Part II of the Agreement.

3. Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

Article 3.3 provides that where the laws of either country require that a person be resident or present in that country in order to qualify for or receive social security benefits, the person may also qualify for or receive those benefits during periods of residence in the other country. U.S. law already permits payment of benefits to U.S. and Spanish nationals who reside in either country. Article 3.3 would also permit the United States to pay certain third country nationals who would otherwise be subject to the alien nonpayment provisions of section 202(t) of the Social Security Act during periods of residence in Spain.

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PART II

Provisions on Coverage

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Part II is intended to eliminate dual coverage, i.e., situations where a worker is covered under the laws of both countries with respect to the same services. In so doing, the existing coverage provisions of the laws of both countries are preserved to the greatest extent possible. The provisions in this Part are intended to eliminate dual coverage by continuing the worker's social security coverage and taxation under the system of the country to whose economy he has the more direct connection and exempting him from coverage and taxation under the other country's system.

Article 4 establishes general rules for eliminating dual social security coverage and contributions for employment and self-employment. Article 5.1 contains an exception to these general rules which would apply in the case of employees sent by an employer in one country to work temporarily in the other country. Article 5.2 and 5.3 regulate the coverage of persons engaged in international air or ship transportation. Article 6 establishes rules applicable to persons employed in U.S. or Spanish Government service.

Article 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State.

Article 4.1 establishes a general territoriality rule which stipulates that ordinarily a person's employment in a country will be compulsorily covered by only that country. Thus, a person working in employment covered under the laws of both countries will remain covered under the system of the country where the employment takes place and will be exempt from coverage under the system of the other country.

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2. A person who would otherwise be covered under the laws of both Contracting States with respect to self-employment shall be subject to the laws of only the Contracting State of which he is a resident.

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Article 4.2 applies to persons whose earnings from self-employment would be subject to compulsory coverage under the laws of both countries. A self-employed Spanish resident whose earnings would otherwise be covered by both Spain and the United States will be covered only under the laws of Spain. A dually covered U.S. resident will be covered only under U.S. laws. This provision will primarily affect self-employed U.S. citizens who reside in Spain. In the absence of an agreement, such persons would be covered under Spanish law because they reside in Spain and would also be covered under U.S. law because they are U.S. citizens.

Article 5

1. Where a person who is covered under the laws of one Contracting State in respect of work performed for a firm in the territory of that Contracting State is sent by that firm to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State as if he were employed in its territory, provided that the period of work in the territory of the other Contracting State is not expected to exceed five years. If the period of work is prolonged due to unforeseen circumstances for more than five years, the laws of the first Contracting State shall continue to apply for a new period of not more than one year, provided that the Competent Authority of the other Contracting State has given its consent. This extension must be requested before the termination of the initial period of five years.

Under Article 5.1, an employee working for an employer located in the United States or Spain who is temporarily transferred to work in the other country for the same employer (or, under certain conditions, a foreign affiliate of the same employer) will continue to be covered by the country from which the employee has been transferred. Ordinarily, this rule will apply only if the transfer is expected to last 5 years or less. However, provision has been made for extending the 5-year limit for an additional year if the Competent Authorities agree to a request for an extension. For purposes of measuring the length of a transfer in the case of workers who have been sent from one country to the other before the Agreement enters into force, any period of work before the Agreement's entry into force will be disregarded. Article 5.1 will apply even if an employee has not been sent directly to the other country but was first assigned to work in a third country.

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2. Traveling employees of air transportation companies who perform work in the territories of both Contracting States and who would otherwise be covered under the laws of both Contracting States shall, with respect to that work, be subject to the laws of only the Contracting State in the territory of which the firm has its home office. However, if such employees reside in the territory of the other Contracting State, they shall be subject to the laws of only that State.

3. A person employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the Contracting State whose flag the vessel flies. A vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Article 6

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

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Under Article 5.2, a member of the flight crew of an aircraft operating between the United States and Spain who would otherwise be covered under the laws of both countries will be covered only under the laws of the country in which the company is headquartered. However, if the employee resides in the other country, he will be subject to the laws of that country.

Under Article 5.3, a person employed on a U.S. or Spanish ship who is covered under the laws of both countries will be covered only under the laws of the country whose flag the ship flies. A ship is considered to fly the flag of the United States if it is an American vessel as defined in section 210(c) of the Social Security Act. Under that definition, an American vessel is one that is documented or numbered under U.S. law or one that is not documented or numbered under the law of any country if its crew is employed solely by one or more U.S. citizens or residents or corporations organized under Federal or State law.

Article 6 provides coverage rules applicable to employees of the U.S. and Spanish Governments.

Article 6.1 is intended to make it clear that, in general, the categories of persons mentioned in the Vienna Conventions on diplomatic and consular relations will not be affected by the coverage provisions of the Agreement. The Conventions, to which both the United States and Spain are parties, apply to members of the staff of a diplomatic or consular mission, including the diplomatic, consular, administrative and technical staffs; dependents of members of those staffs; the domestic service staff of the mission; and private servants employed by members of such missions.

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2. Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first State. For the purposes of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.

Article 7

The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of Articles 4, 5 and 6 with respect to any person or category of persons.

Article 8

In determining eligibility for voluntary or optional coverage in accordance with Spanish laws, periods of coverage completed by a person under United States laws shall be considered as periods of coverage completed under Spanish laws if the person fulfills the other requirements provided in Spanish laws.

ANNOTATIONS AND COMMENTS

In general, persons mentioned in the Vienna Conventions are exempt from social security coverage and contributions under the laws of the host country unless specific arrangements have been made to waive their immunity. Persons whose immunity has been waived would be subject to the laws of the host country, including the coverage provisions of this Agreement.

Article 6.2 provides that if a U.S. or Spanish national is employed by his Government in the other country but is not in one of the categories mentioned in the Vienna Conventions (i.e., is not employed in a diplomatic or consular capacity), the person will be subject only to the laws of his own country.

Under Article 7, either country may grant an exception to the coverage rules of the Agreement provided the other country agrees. Such an exception may be granted on behalf of an individual worker or on behalf of all workers employed under similar circumstances, e.g., in the same profession or for the same employer. This provision is designed to permit the Competent Authorities to correct anomalous situations that arise to the disadvantage of workers or to eliminate dual coverage in unforeseen circumstances.

Under Spanish law, a person who has credit for at least 1,800 days of compulsory social security contributions and who leaves covered employment may begin making voluntary contributions in order to maintain his Spanish social security coverage. Under Article 8, the Spanish agency will consider U.S. periods of coverage in determining whether a person meets the 1,800-

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day requirement for eligibility to make voluntary contributions to the Spanish system. Other requirements of Spanish law for eligibility to contribute voluntarily would also have to be met. For example, a person would have to begin making voluntary contributions within 90 days following the termination of employment compulsorily covered under the Spanish system.

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PART III

Part III establishes the basic rules for determining entitlement to social security benefits when an individual has worked in both the United States and Spain, and the rules for determining benefit amounts when entitlement is based on combined work credits. Chapter I contains rules specifically applicable to the Spanish system, and Chapter II deals with the U.S. system.

Special Provisions on Benefits

Chapter I

Application of Spanish Laws

The provisions of Chapter I apply to old-age, survivors, and long-term disability benefits under the Spanish general and special social security systems. However, the provisions apply to survivors and disability benefits under those systems only in cases where a worker's death or disability was caused by a nonoccupational accident or illness.

Benefits under the Spanish systems are paid to workers who meet applicable eligibility standards, including minimum length-of-coverage and recency-of-work requirements. Under the provisions of Chapter I, Spain will combine U.S. coverage with periods of Spanish coverage so that people who do not meet the minimum coverage and recency-of-work requirements may become eligible for partial benefits.

Spanish old-age benefits are payable in full at age 65, or at a reduced rate at age 60. To qualify, the person must have made contributions for at least 15 years, including at least 2 years during the 8 years preceding the date of his application for old-age benefits.

The old-age benefit amount is based on the worker's average monthly covered earnings (referred to in the Spanish law as the benefit computation base). Average monthly earnings are determined by averaging the worker's covered earnings during a period of 72 consecutive months immediately preceding retirement. (Under transitional provisions of Spanish law, the averaging period will increase to 84 months on August 1, 1987 and to 96 months on August 1, 1988.) For purposes determining average monthly earnings, the earnings in th

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24 months of the averaging period are taken at their nominal value, while earnings in all the earlier months of the averaging period are indexed to the consumer price index in Spain for the year of the worker's retirement.

The monthly old-age benefit amount equals 50 percent of the worker's average monthly earnings plus 2 percent of average monthly earnings for each year of contributions in excess of 10, up to a maximum of 100 percent for a worker with 35 years of contributions. In 1986, the minimum old-age benefit for a person over age 65 is 29,800 pesetas per month (32,360 pesetas if married).

Under Spanish law, survivors benefits may be paid to a worker's widow or dependent widower, to the worker's surviving children and, under certain conditions, to the worker's dependent parents, grandparents, grandchildren, brothers, and sisters. Unless the worker's death was caused by an accident or occupational disease, the worker must have paid contributions for at least 500 days during the 5 years preceding death or must have been receiving an old-age or disability benefit at the time of death.

A widow's or dependent widower's benefit is equal to 45 percent of the worker's average earnings or, if the worker was retired, 60 percent of the benefit the worker was receiving at the time of death. The minimum widow's or dependent widower's benefit in 1986 is 19,600 pesetas per month for a surviving spouse under age 65 and 22,700 pesetas per month for one over age 65.

Surviving children's benefits are paid to half and full orphans who are under 18 years of age (or any age if disabled). The amount of a surviving child's benefit equals 20 percent of the worker's average earnings. The minimum surviving child's benefit in 1986 is 8,800 pesetas per month. In the case of full

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orphans, each surviving child's benefit is increased by the amount which would have been payable to the worker's surviving spouse, divided by the number of children.

The Spanish system pays three types of disability benefits: temporary disability benefits (i.e., short-term cash sickness benefits), provisional disability benefits and several categories of permanent disability benefits. The benefit provisions of the agreement apply to Spanish provisional and permanent disability benefits, but not to temporary disability benefits.

Temporary and provisional disability benefits are payable to workers who have credit for 180 days of contributions during the preceding 5 years. The temporary disability benefit is payable for up to 1 year with an extension for an additional 6 months possible in some cases. The benefit equals 60% of the worker's covered earnings in the month preceding the incapacity, increasing to 75% beginning with the 21st day of disability.

If a worker's incapacity continues beyond the period of eligibility for temporary disability benefits, provisional disability benefits are payable at the same rate as the temporary disability benefit for an additional period of up to 4½ years.

Permanent disability benefits are generally payable only if the incapacity continues beyond the 4½-year period of eligibility for provisional disability benefits. The minimum period of contributions required for a permanent disability benefit (based on nonoccupational illness) depends on whether the worker was registered (see annotation to article 14) at the time of disability onset. If the worker was not registered (nor deemed registered) at the time of onset, he must have credit for at least 15 years of contributions, with at least one-fifth of the contributions occurring within the 10 years immediately

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prior to onset. If the worker was registered (or deemed registered) and was 16 to 25 years of age at the time of onset, he must have paid contributions during at least one-half the period between attainment of age 16 and the date of onset. If aged 26 or older at the time of onset, the worker must have a total of at least 5 years of contributions and must have paid contributions during at least one-fourth of the years between attainment of age 20 and the date of onset; in addition, at least one-fifth of the contributions must have been made in the 10 years immediately before onset.

Benefit amounts payable on account of permanent disability are based on the degree of work incapacity. A worker whose earnings capacity in his or her prior occupation has been reduced by at least one-third may qualify for a partial occupational disability benefit consisting of a lump sum equal to 24 times the worker's last monthly covered earnings. A worker who has lost 100 percent of prior earnings capacity in his or her occupation may qualify for a pension equal to 33 percent of average covered earnings as computed for old-age benefit purposes. This percentage may be increased to 75 percent if the worker can be expected to have difficulty finding work outside his or her profession due to age, lack of training or special social or economic circumstances in the worker's area of residence. (A worker under age 60 who qualifies for a permanent total occupational disability benefit may elect to receive a lump sum in lieu of the benefits that would be payable up to age 60.)

If the worker is permanently disabled for all work as a result of a nonwork-related accident and was registered at the time of onset, the benefit amount equals 100 percent of the worker's average covered earnings in the 12 months prior to onset. If the worker was not registered at onset or was disabled as a result of a nonwork-related illness, the benefit amount is determined in the same manner as for an old-age benefit. The benefit amount may be increased by 30% in the case of severe disabilities requiring extraordinary expenses.

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Article 9

Where a worker has been subject to the laws of both Contracting States, benefits shall be granted under the following conditions:

Article 9 establishes the basic rules which the Spanish agency will apply when taking account of periods of U.S. Social Security coverage for purposes of determining eligibility for benefits under the Spanish system. The article also establishes rules for determining benefit amounts when entitlement is based on totalized (i.e., combined) work credits.

1. If the person satisfies the conditions required by Spanish laws for a right to benefits, the Spanish agency shall determine the amount of the benefit according to the laws which it applies taking into account only the periods of coverage completed under its law.

Article 9.1 stipulates that the Spanish agency will not be required to take into account U.S. periods of coverage in determining benefit amounts if a worker's periods of coverage under the Spanish system alone are sufficient to entitle him to a benefit. This provision is similar in effect to Article 17.1, which is applicable to the United States.

2. If the person does not satisfy the period-of-coverage requirements under Spanish laws, the benefits which he may claim shall be paid according to the following rules:

Article 9.2 establishes the rules for determining Spanish benefit eligibility and amounts in the case of workers who have periods of coverage in Spain and the United States, but not enough Spanish coverage to qualify for benefits from the Spanish system.

(a) The periods of coverage completed under each of the laws of the two Contracting States, as well as the periods recognized as equivalent, shall be totalized, provided they do not coincide, both for the determination of the right to benefits as well as for the maintenance or recovery of this right.

Article 9.2 (a) and (b) provide that the Spanish agency will add U.S. quarters of coverage to periods of Spanish coverage in determining whether the person meets the various minimum coverage requirements for benefit eligibility under Spanish law (including the old-age benefit requirements of 15 years of total contributions and 2 years of contributions during the last 8 years, the survivors benefit requirement of 500 days of contributions during the last 5 years, the provisional disability benefit requirement of 180 days of contributions during the last 5 years, and the various coverage requirements for permanent disability benefits). Spain will not credit additional days of contributions based on U.S. coverage if those days are already credited under Spanish laws.

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(b) Taking into account the totalization of periods as described above, the Spanish agency shall determine, in accordance with its own laws, if the person meets the requirements for a benefit.

(c) If a right to a benefit is acquired, the amount shall be determined as if all the periods of coverage, totalized according to the rules established in subparagraph (a), had been completed exclusively under its own laws (theoretical pension). When the amount of the theoretical pension thus determined is less than the minimum pension provided at that time under Spanish laws, such minimum shall be considered as the theoretical pension.

(d) The amount of the benefit actually due the person shall be established by reducing the amount determined in subparagraph (c) based on the ratio of the periods of coverage completed under Spanish laws to the total of the periods totalized according to subparagraph (a) (pro rata pension).

3. Periods of coverage shall be totalized under this Article according to the following rules:

(a) A quarter of coverage under United States laws shall equal 91 days of contributions under Spanish laws.

(b) The periods of coverage resulting from the preceding conversion shall not be totalized under Spanish laws to the extent they coincide with periods of contributions under Spanish laws.

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Article 9.2 (c) and (d) establishes the rules to be applied by the Spanish agency in determining benefit amounts when a person qualifies for old-age, survivors or disability benefits by taking account of the worker's periods of U.S. coverage. In this case, the Spanish agency, in accordance with Article 9.2(c), will first compute a theoretical benefit amount as if the worker's U.S. periods of coverage had been completed under Spanish law. For example, in the case of a Spanish old-age benefit, U.S. periods will be added to Spanish periods to determine the percentage of average earnings that theoretically would be payable as an old-age benefit. (Under Article 13.1, the Spanish agency will only consider covered Spanish earnings in determining the average earnings on which the theoretical benefit amount is based.) In cases where the theoretical benefit amount is less than the minimum benefit currently payable under Spanish law, the minimum benefit will be used as the theoretical amount.

Under Article 9.2(d), the Spanish agency will compute the amount of the benefit it will actually pay by prorating the theoretical amount determined under Article 9.2(c). The pro rata benefit will be computed by multiplying the theoretical amount by the ratio of the periods of coverage under Spanish laws to the total periods in both countries.

The Spanish agency will credit 91 days of coverage for each quarter of coverage certified by the Social Security Administration, less any days within the quarter that are already credited under Spanish laws. (See Article 10.3 for a special rule that applies when U.S. or Spanish periods of coverage are not assigned to specific time periods.)

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

Article 10

1. For purposes of the application, where appropriate, of the principle of totalization, if the total duration of the periods of coverage acquired under Spanish laws is less than 1 year, and if, taking into account only those periods, no right to benefits is derived under such laws, the Spanish agency shall not grant benefits based on such periods.

Under Article 10.1, the Spanish agency will not take U.S. periods of coverage into account under the Agreement if the worker has less than one year of Spanish coverage. Like the similar 6-quarter-of-coverage requirement for totalization by the United States under Article 17.2, this provision is intended to avoid the considerable administrative burden that would result from processing claims for very small benefits based on minimal periods of coverage.

2. The provisions of paragraph 1 shall not apply if a right to benefits under Spanish laws may be acquired by totalizing periods of coverage of less than 1 year in both Contracting States.

Article 10.2 provides an exception to the 1-year requirement for totalization by Spain which applies in cases where a worker has less than 1 year of coverage in each country but could become eligible for a benefit from Spain if his coverage in both countries were totalized. This could be significant, for example, in determining a person's right to Spanish survivors benefits for which a person may become eligible if the worker had at least 300 days of contributions within the 5 years before death.

3. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Both paragraphs 2(a) and 3(b) of Article 9 stipulate that Spain will not count U.S. periods of coverage that coincide with coverage already credited under Spanish laws when determining a person's eligibility for Spanish benefits. Since it is not always possible to determine exactly when certain periods of coverage under the U.S. and Spanish systems were earned, a problem could arise. For example, beginning in 1978, the method of crediting quarters of coverage under the U.S. system changed from a quarterly to an annual method. Before 1978, a worker was credited with one quarter of coverage for every calendar quarter in which he was paid at least $50 in covered wages, while now a worker earns up to 4 quarters of coverage in a year based on the amount of his annual earnings. Thus, for years after 1977, the U.S. earnings record does not indicate the calendar quarters in which quarters of coverage were actually earned.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

A similar problem arises under the Spanish system. Where workers paid contributions under Spanish social security systems in effect from 1921 to 1939, a record exists of the date the contributions began, but not of the actual duration of the period of contributions. Spanish law, therefore, grants credit for 1,800 days of contributions to anyone with any contributions credited during this period without assigning the credit to particular days.

Under Article 10.3, the Spanish agency will presume that quarters of coverage certified by the United States do not overlap with periods of coverage under the Spanish system in those situations where the coverage credited in one country or the other cannot be assigned to specific periods of time. As a result, the periods will be credited in full. Article 17.4 contains an identical provision applicable to the United States.

Article 11

1. If Spanish laws establish as a condition for the award of certain benefits that periods of coverage be completed in a profession subject to a special system or in a specific profession or occupation, the periods completed under the laws of the other Contracting State shall not be taken into account for the awarding of these benefits unless those periods were completed under a corresponding system or, failing that, in the same profession or occupation.

2. If, taking into account the periods thus completed, the interested person does not meet the required conditions for entitlement to these benefits, these periods shall be taken into account for the awarding of benefits under the general system.

In many cases, the benefits provided under the separate Spanish social security systems for specific occupational categories are more favorable than those under the general system (they are never less favorable). Article 11.1 makes it clear that a worker's U.S. periods of coverage will be taken into account to meet the eligibility requirements for these special system benefits, but only if they were completed in an occupation or profession similar to that covered by the special system. Article 11.2 provides that if the U.S. periods of coverage, totalized with Spanish periods of coverage under a special system, do not qualify the worker for benefits under the special system, the periods will be taken into account for meeting the eligibility requirements for benefits under the Spanish general system.

PRINCIPAL AGREEMENT	ANNOTATIONS AND COMMENTS
Article 12	
1. Benefits awarded in accordance with this Chapter shall be revalued with the same frequency and in the same amount as provided in Spanish internal laws.	Under recent changes in Spanish law, social security cash benefits are to be automatically adjusted at the beginning of each year in accordance with the projected change in the Spanish consumer price index for that year. In the past, however, benefit adjustments have frequently taken the form of flat-rate increases in all benefit amounts that fall within specified ranges. Article 12 stipulates that the Spanish agency will adjust totalization benefits it pays under the Agreement in the same manner as Spanish national law benefits. In the case of flat-rate increases payable to Spanish totalization beneficiaries, the amount of the adjustment will be proportional to the ratio used to prorate the theoretical benefit on which the totalization benefit was based, i.e., the ratio of Spanish periods of coverage to combined U.S. and Spanish periods.
2. Pro rata pensions referred to in Article 9, paragraph 2(d), shall be converted by reducing the amount of the revaluation according to the same rule of proportionality cited in that Article.	
Article 13	
In order to determine the extent of a worker's disability, the Spanish agency shall take into account medical reports and administrative data forwarded by the agency of the other Contracting State. Nevertheless, that agency shall have the right to arrange for the worker to be examined by a physician of its choice.	Article 13 authorizes the Spanish agency, in processing claims for disability benefits, to consider any medical or other evidence relevant to the determination of the worker's disability which is submitted to it by the U.S. Social Security Administration. However, the Spanish agency retains the right to have a physician of its own choice examine the worker.
Article 14	
1. To obtain a benefit in the cases set forth in Article 9, paragraph 2, the requirement of Spanish laws that a person be in a situation deemed equivalent to registered (situacion asimilada al alta) shall be considered to have been met if the person concerned is covered under United States laws or is in receipt of a benefit in accordance with United States laws.	Under Spanish law, an employee or self-employed person must be registered with the social security authorities every time the worker begins a job that is covered under the social security system. The authorities must also be notified when the worker terminates the covered employment or self-employment.

PRINCIPAL AGREEMENT

2. For purposes of paragraph 1, a person shall be considered to be covered under United States laws if the person is insured for a benefit under such laws or has credit for at least 1 quarter of coverage under such laws during a period of 12 calendar quarters ending with the calendar quarter in which the insured event occurs according to Spanish laws.

ANNOTATIONS AND COMMENTS

Prior to August 1985, in order to qualify for any benefits under the Spanish social security system, a worker had to be registered at the time he applied for an old-age benefit, died or became incapacitated for work. Legislation effective August 1, 1985, has removed the registration requirement for old-age and permanent disability benefits. However, workers who are registered at the time of retirement or disability onset may continue to qualify for benefits under somewhat less stringent coverage requirements and may also qualify, in the case of workers permanently disabled as a result of a nonoccupational accident, for somewhat larger benefits. In addition, registration at the time of death or work incapacity continues to be a requirement for Spanish survivors and provisional disability benefits.

Under certain conditions, a worker can be deemed to be registered for Spanish benefit purposes. For example, a worker is deemed registered for 90 days after leaving covered work orwhile receiving unemployment benefits or while contributing to the social security system on a voluntary basis (see the annotation to article 8). Nevertheless, workers who have moved from Spain generally can no longer meet the registration requirement of Spanish law. Article 14.1, therefore, provides that a person will also be deemed to be registered for Spanish benefit purposes if he is receiving a U.S. Social Security benefit or has a record of current U.S. Social Security coverage, as defined in paragraph 2.

Article 14.2 provides that a person will be considered to have a record of current U.S. coverage for purposes of meeting the registration requirement of Spanish law if the person (1) has credit for at least one U.S. quarter of coverage during the 12-quarter period ending with the quarter in which the worker applies for a Spanish old-age benefit, dies or becomes disabled as defined in Spanish laws or (2) is insured for a U.S. Social Security benefit. Under U.S. law, a worker is considered fully insured for a benefit if he has at least one quarter of coverage (earned at any time) for every calendar year after 1950 or, if later, the year in which he attained age 21, and prior to the year in which he attains age 62, dies or becomes disabled, whichever occurs earliest.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

Article 15

1. In calculating the benefit computation base, the Spanish agency shall apply its own law.

Most Spanish social security benefits are related to the worker's average earnings on which contributions were paid during a specified period prior to pension eligibility. The average earnings amount is referred to in Spanish law as the benefit computation base. The earnings that are taken into account for contribution and benefit purposes are subject to minimum and maximum amounts that are specified for various occupational categories. Thus, low-income workers whose earnings fall below the minimum amount specified for their occupational category have contributions assessed and benefits computed based on the minimum amount. Under Article 15.1, in determining the benefit computation base for persons who qualify for Spanish totalization benefits, the Spanish agency will consider only earnings credited under the Spanish social security system.

2. When all or part of the contributory period elected by the applicant for the calculation of his benefit computation base has been completed under United States laws, the Spanish agency shall determine the aforementioned computation base by reference to the minimum contribution base in force in Spain during that period or fraction thereof, for workers of the same occupational or professional category to which the person concerned belonged while in Spain.

In the case of old-age and permanent disability benefits, the benefit computation base, i.e., average earnings amount, is based on earnings during a prescribed period (called the contributory period) immediately preceding the worker's retirement or disability onset. This period is currently 72 months and will increase to 96 months by August 1, 1988. A worker who had been covered under the U.S. rather than Spanish system during part or all of his contributory period would have his benefit amount under the Agreement lowered if the benefit computation base were determined by averaging in months during which no earnings were credited under the Spanish system. Article 15.2, therefore, provides that for any months of U.S. coverage during the contributory period Spain will deem an earnings amount equal to the minimum earnings amount subject to contributions for workers in the same occupational category.

PRINCIPAL AGREEMENT	ANNOTATIONS AND COMMENTS
Article 16 The lump-sum death benefit provided by Spanish laws shall be granted solely on the basis of those laws and in conformity with the requirements and conditions of those laws.	Under the Spanish social security system, a small lump-sum payment is made to the person who incurred expenses for the funeral of any individual who was registered under social security at the time of his or her death. Absent evidence to the contrary, this person is presumed to be the spouse, child or other relative living with the insured individual, in that order. The amount of this one-time payment is currently 5,000 pesetas. Under Article 16 of the Agreement, the Spanish agency will not consider U.S. coverage in determining eligibility for this lump-sum funeral grant, but will base the determination solely on Spanish law.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

Chapter II

Application of United States Laws

Chapter II contains rules for determining U.S. benefit eligibility and amounts in the case of workers who have periods of coverage credited under both the U.S. and Spanish social security systems.

Article 17

1. Where a person has sufficient quarters of coverage under United States laws to satisfy the requirements for entitlement to benefits, the agency of the United States shall determine the amount of the benefit according to the laws which it applies taking into account only the quarters of coverage completed under its laws.

Article 17.1 makes clear that the United States will not consider a worker's Spanish periods of coverage in computing U.S. benefit amounts if entitlement to the benefit is established based on the worker's U.S. coverage alone. This provision is similar to Article 9.1, which is applicable to Spain, and to provisions contained in other U.S. social security agreements and is included because pro rata benefits based on totalization (i.e., combined coverage credits) would almost never be advantageous for anyone who is insured under U.S. national law.

2. Where a person does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, including a lump-sum death benefit, but has completed at least six quarters of coverage under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Chapter, periods of coverage which are credited under Spanish laws and which do not coincide with periods of coverage already credited under United States laws.

Article 17.2 stipulates that, where a worker does not have enough U.S. coverage to meet the eligibility requirements for U.S. benefits, but has a minimum of 6 quarters of coverage credited under U.S. law, the U.S. Social Security Administration will take into account, for purposes of meeting those requirements, periods of coverage credited under Spanish law, insofar as they do not coincide with quarters of coverage already credited under U.S. laws.

PRINCIPAL AGREEMENT

3. In determining eligibility for benefits under paragraph 2 of this Article, the agency of the United States shall credit one quarter of coverage in each calendar year for every 91 days of contributions in that calendar year certified by the agency of Spain. If the conversion provided in the preceding sentence produces a remainder, that remainder shall be treated as one additional quarter of coverage. However, no quarter of coverage shall be credited under this paragraph for any calendar quarter already credited as a quarter of coverage under United States laws, nor shall the total number of quarters of coverage to be credited for a year exceed four.

4. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Article 18

Entitlement to a benefit under United States laws which results from Article 17, paragraph 2, shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of that paragraph.

ANNOTATIONS AND COMMENTS

Article 17.3 establishes the procedure to be followed in converting periods of coverage under the Spanish system into equivalent periods under the U.S. system. Periods of coverage under the Spanish system are measured in "days of contributions" while U.S. periods of coverage are measured in calendar quarters called "quarters of coverage." Under Article 17.3, SSA will credit one quarter of coverage in a calendar year for every 91 days of contributions certified for that year by the Spanish agency. However, SSA will not credit days of contributions under Spanish laws which fall within a calendar quarter which has already been credited as a U.S. quarter of coverage. In addition, SSA will not credit more than 4 quarters of coverage for any calendar year.

Article 17.4 is similar in effect to the provision in Article 10.3, which is applicable to Spain. See the annotation to that provision for an explanation.

Article 18 provides that where a worker who is entitled to a pro rata totalization benefit from the United States acquires additional U.S. coverage which enables him to qualify for an equal or higher benefit based on his U.S. coverage alone, the Social Security Administration will pay the regular national law benefit rather than the totalization benefit.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

Article 19

Where entitlement to a benefit under United States laws is established according to the provisions of Article 17, paragraph 2, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on:

I. The person's average earnings credited exclusively under United States laws.

II. The ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

Article 19 describes the method of computing U.S. benefit amounts where entitlement is established based on the totalization (i.e., combination) of U.S. and Spanish coverage. As stipulated in Article 17.1, persons who qualify for U.S. benefits based on their U.S. coverage alone are not eligible for totalization benefits from the United States.

Under the procedure outlined in Article 19, the amount of a worker's benefit depends on both the level of his earnings and the duration of his coverage under U.S. Social Security. This computation procedure is described in detail in regulations promulgated by the Department of Health and Human Services (20 CFR 404.1918 as revised July 24, 1984). The first step in the procedure is to compute a theoretical benefit amount as though the worker had worked a full coverage lifetime (i.e., full career) under U.S. Social Security at the same earnings level as during his actual periods of U.S. covered work. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime completed under the U.S. program. A coverage lifetime is defined in the regulations as the number of the worker's benefit computation years, i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

PART IV

Miscellaneous Provisions

Article 20

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an Administrative Arrangement.

Article 20 provides authority for the two countries to furnish each other nonreimbursable administrative assistance in administering this Agreement. Such assistance would include the taking of applications, and the gathering and exchanging of information relevant to claims filed under the Agreement. Article 20 also permits exceptions to the principle of nonreimbursement if the two countries so agree. Such an exception is contained in Article 8 of the Administrative Arrangement which has been negotiated to implement this Agreement. Under that provision, the agency of one country could, for the sole purpose of determining a claimant's benefit rights under its own laws, request the agency of the other country to arrange a medical examination for the claimant. In such cases, the costs incurred in arranging the examination would be reimbursed by the agency that requested it.

Article 21

The Competent Authorities of the two Contracting States shall:

(a) Establish Administrative Arrangements for the application of the present Agreement.

(b) Determine their respective liaison agencies whose functions shall be established in the Administrative Arrangement.

(c) Communicate to one another the measures adopted for the application of this Agreement.

(d) Notify one another of laws and regulations which modify those listed in Article 2.

Article 21 lists several duties of the Competent Authorities under the Agreement. Clause (a) authorizes the Competent Authorities to make any administrative arrangements that may be necessary to implement and administer the Agreement. Clause (b) requires that they designate liaison agencies that will have primary responsibility for coordinating and administering the coverage and benefit provisions of the Agreement. (See Article 2.1 of the Administrative Arrangement for these designations.) Clause (c) requires the Competent Authorities to notify each other of measures they have taken unilaterally to implement the Agreement. Clause (d) obligates the Competent Authorities to notify each other of any changes in their respective social security laws that may affect the application of the Agreement.

PRINCIPAL AGREEMENT	ANNOTATIONS AND COMMENTS
Article 22	
1. Disagreements between the Competent Authorities of the two Contracting States regarding the interpretation or application of this Agreement and its Administrative Arrangements shall, as far as possible, be settled by the Competent Authorities.	Article 22.1 obligates the Competent Authorities to attempt to resolve any dispute between them regarding the Agreement through direct consultation or negotiation.
2. If such a disagreement cannot be resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.	Article 22.2 requires both States to establish an arbitral procedure in any case where a disagreement has not been resolved within six months by the Competent Authorities and either State requests that the matter be submitted to arbitration.
Article 23	
1. Correspondence between the Competent Authorities, agencies, liaison agencies and individuals, as well as applications or documents, may be in English or Spanish.	The Competent Authorities, agencies, and liaison agencies in both countries will accept applications, correspondence and other documents in either English or Spanish.
2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular or other authorities.	Some countries require that the authenticity of documents which are submitted to their social security authorities by or on behalf of persons in another country be certified by a diplomatic, consular or other official representative in the other country. (The United States has no such requirements.) Under Article 23.2, neither the United States nor Spain will require such authentication of documents submitted under the Agreement.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

Article 24

1. Any application, appeal or other document which according to the laws of a Contracting State must be submitted within a specified period to an agency of that Contracting State, but which is instead submitted within the same period to the agency of the other Contracting State, shall be considered to have been submitted on time. In such case, the agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

Article 24.1 provides that an application, appeal or other document which must be filed within a prescribed time limit with an agency of one country shall be considered to have been filed on time if filed within such limit with an agency of the other country. The agency with which the application, appeal or other document is filed shall transmit it without delay to the liaison agency of the other country, indicating the date the document was received.

2. Any claim for benefits presented in accordance with the laws of one Contracting State shall be considered as a claim for the corresponding benefits under the laws of the other State, in conformance with conditions and limitations established in an Administrative Arrangement.

Article 24.2 provides that an application for a benefit from one country will be considered to be an application for the same type of benefit from the other country, subject to provisions contained in the Administrative Arrangement. Article 4 of the Administrative Arrangement which has been concluded for the implementation of this Agreement sets forth the conditions under which an application submitted to the agency of one country will protect a claimant's right to benefits under the laws of the other country.

Article 25

The benefit of exemptions from or reductions of taxes, stamps, notarial or registration fees or other similar charges provided in the laws of one of the Contracting States for certifications and documents which are required in application of the laws of that State, shall be extended to documents and certifications issued in application of the laws of the other State or of this Agreement.

Article 25 provides that if the laws of one country exempt documents submitted in connection with a social security claim from fees or charges, that country shall also apply the exemption with respect to documents which are sent to the other country by or on behalf of a claimant or beneficiary.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

Article 26

1. Payments due in accordance with this Agreement may be validly made in the currency of the Contracting State whose agency is making the payment.

Benefits to be paid by a country under this Agreement may be paid in the currency of that country. This corresponds to the current practice of both countries regarding benefit payments.

2. In case provisions restricting the transfer of currency are promulgated in either of the Contracting States, the two States shall immediately adopt measures necessary to guarantee the rights derived from this Agreement.

Should either country impose restrictions on the exchange or exportation of its currency, steps shall be taken to assure the payment of amounts due under the Agreement.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

PART V

Transitional and Final Provisions

Article 27

1. In the application of this Agreement, consideration shall be given to periods of coverage under the laws of either Contracting State which occurred prior to the entry into force of this Agreement, in order to determine the right to benefits under this Agreement; except that neither State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.

In determining benefit eligibility and amounts under the Agreement, periods of coverage occurring before the Agreement enters into force will be taken into account. However, the Social Security Administration will not credit Spanish periods of coverage completed prior to 1937, the earliest year for which coverage may be credited under U.S. law.

2. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force. This Agreement shall not apply to rights settled by a lump-sum payment.

Under Article 27.2, events material to the determination of benefit rights, such as marriage, death, disability, or attainment of a certain age, which occurred prior to the effective date of the Agreement will be considered in applying the Agreement. However, the Agreement will not apply if benefit rights have been settled by a lump-sum payment. This provision, which has no effect under U.S. law, would apply, for example, where a person has received certain lump-sum disability benefits which are provided under Spanish law to persons disabled for their usual occupation (but not for all work).

3. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

Benefits payable as a result of the Agreement will be paid only for periods beginning with the date on which the Agreement enters into force. Any lump-sum death payments provided by section 202(i) of the U.S. Social Security Act will be payable under the Agreement only if the death occurs on or after the date the Agreement enters into force.

PRINCIPAL AGREEMENT

4. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force. Benefit rights which interested persons may have acquired prior to the entry into force of this Agreement may be reviewed upon application.

ANNOTATIONS AND COMMENTS

Although it is unlikely that the provisions of this Agreement would cause any reduction in benefits, Article 27.4 guarantees that benefits which are already being paid at the time the Agreement becomes effective will not be reduced as a result of its entry into force. The second sentence of this paragraph also permits a person who is already receiving benefits to apply to have his benefit rights reviewed after the Agreement's entry into force. This provision was included at the request of the Spanish in order to provide additional protection for beneficiaries under Spanish law. It is not expected to have any effect under U.S. law, since under Article 17.1, the totalization benefit provisions applicable to the United States only apply where a worker would otherwise have insufficient U.S. coverage to qualify for a benefit.

Article 28

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

Article 28.1 provides for the Agreement to remain in effect until the expiration of 1 calendar year after the year notice of termination is given by one of the countries.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 28.2 provides that, in the event of termination of the Agreement, a person will retain benefit rights acquired before termination; special arrangements would determine the extent to which each country would recognize benefit rights in the process of being acquired at the time of termination--for example, periods of coverage which had not yet resulted in fully insured status.

Article 29

This Agreement may be amended in the future by supplementary agreements which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 29 provides that the Agreement may be amended by future supplementary agreements and that such agreements may have retroactive effect. After a supplementary agreement becomes effective, it will thereafter be considered an integral part of the Agreement.

PRINCIPAL AGREEMENT

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ANNOTATIONS AND COMMENTS

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Article 29 provides that the Agreement may be amended by future supplementary agreements and that such agreements may have retroactive effect. After a supplementary agreement becomes effective, it will thereafter be considered an integral part of the Agreement.

PRINCIPAL AGREEMENT

ANNOTATIONS AND COMMENTS

Article 30

The Government of each of the Contracting States shall notify the other of the fulfillment of its statutory or constitutional requirements for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the exchange of notifications.

Each country will follow its own constitutional procedures for approval of the Agreement. In the United States, the Agreement must be presented to the Congress for a review period of 60 days during which at least one House of Congress has been in session as required by section 233(a) of the U.S. Social Security Act. In Spain, the Agreement must be approved by the National Parliament. The Agreement will enter into force on the first day of the second calendar month after each Government has received formal notification of approval from the other Government.

In witness whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

Done at Madrid on September 30, 1986, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of the United States of America:

Reginald Bartholomew

For the Government of Spain:

Francisco Fernandez Ordonez

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY BETWEEN THE UNITED STATES OF AMERICA AND SPAIN

Pursuant to the provisions of Article 21(a) of the Agreement between the United States of America and Spain on Social Security, signed September 30, 1986, hereinafter referred to as the "Agreement", the Competent Authorities of both Contracting States have agreed on the following:

ADMINISTRATIVE ARRANGEMENT

ANNOTATIONS AND COMMENTS

Chapter I

General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 1 provides that terms used in both the Agreement and this Administrative Arrangement, whether defined in the Agreement or not, shall have the same meaning as in the Agreement.

Article 2

1. The liaison agencies referred to in Article 21(b) of the Agreement shall be the following:

   a) For Spain: the National Social Security Institute.

   b) For the United States of America: the Social Security Administration.

Article 2 designates one agency in each country that will have primary responsibility for coordinating and administering the coverage and benefit provisions of the Agreement. The Social Security Administration is the designated liaison agency for the United States, and the National Social Security Institute is the counterpart liaison agency for Spain.

2. The liaison agencies designated in the preceding paragraph shall agree on joint procedures, forms and other documents necessary for the application of the Agreement and this Administrative Arrangement.

Article 2.2 authorizes and requires the liaison agencies of the United States and Spain to agree upon those procedures, forms and other documents which must be prepared jointly for the implementation of the Agreement and Administrative Arrangement.

ADMINISTRATIVE ARRANGEMENT

Chapter II

Provisions on Coverage

Article 3

1. Where the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the agency of that Contracting State, upon request of the employer, employee or self-employed person, shall issue a certificate stating that the employee or self-employed person is covered by those laws. This certificate shall be proof that the named worker is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued

   a) In Spain: by the National Social Security Institute.

   b) In the United States of America: by the Social Security Administration.

ANNOTATIONS AND COMMENTS

Article 3 establishes procedures pursuant to Part II of the Agreement for the elimination of dual social security coverage and taxation of the same work under the systems of both the United States and Spain.

Under Article 3.1, the agency of the country whose social security coverage laws will continue to apply to a person in accordance with the various rules in Part II of the Agreement will issue a certificate to that effect when requested to do so by a worker, the worker's employer or a self-employed person. When presented to the appropriate agency of the other country, the certificate will establish the basis for the exemption of the person from the coverage laws of that country. Retroactive recovery of U.S. contributions paid with respect to services for which a coverage exemption has been in effect would be subject to the time limitations for refunds of taxes in the Internal Revenue Code.

Article 3.2 designates the agencies responsible for issuing coverage certificates.

ADMINISTRATIVE ARRANGEMENT

3. The agency of a Contracting State which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate to the liaison agency of the other Contracting State as needed by the latter agency.

4. Where the detachment referred to in Article 5, paragraph 1, of the Agreement is extended for unforeseen reasons beyond 5 years, the employer, with the consent of the employee, may apply to the Competent Authority of the Contracting State from which the employee was sent for special authorization to continue coverage of the employee under the laws of that Contracting State. Upon approval, that Competent Authority shall transmit the application for the extension to the Competent Authority of the other Contracting State for its approval, as provided for in the aforementioned Article.

ANNOTATIONS AND COMMENTS

Article 3.3 provides that an agency issuing a coverage certificate will furnish the liaison agency in the other country a copy of the certificate when needed.

Article 5.1 of the Agreement provides that an employee who is transferred by his employer from one country to the other will remain subject to social security coverage and contributions only in the country from which he has been sent, provided that the duration of the transfer is not expected to exceed 5 years. If unforeseen circumstances require that the assignment in the host country be prolonged beyond 5 years from the original date of transfer (but not beyond 6 years from that date), the employee can continue to be exempt from coverage in the host country, provided the extension is requested before the expiration of the initial period of 5 years and both Competent Authorities have given their consent. Article 3.4 of the Administrative Arrangement specifies that before an extension of the 5-year period may be granted, both the employer and employee must agree to the extension and the employer must request the extension from the Competent Authority of the country from which the worker was sent. If that Competent Authority is willing to grant the extension, it will forward the request to the Competent Authority of the other country for its concurrence.

ADMINISTRATIVE ARRANGEMENT

ANNOTATIONS AND COMMENTS

Chapter III

Special Provisions on Benefits

Article 9

1. An application for benefits presented in accordance with the laws of one Contracting State shall be considered as an application for the corresponding benefits under the laws of the other Contracting State in accordance with Article 24, paragraph 2, of the Agreement, if the applicant presents the application in writing and either requests that it be considered an application under the laws of the other Contracting State or, if the applicant has not specifically restricted the application to benefits under the laws of the first State, provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

Article 24.2 of the Agreement provides that an application for benefits presented in accordance with U.S. or Spanish law will be considered an application for corresponding benefits under the laws of the other country, subject to conditions to be established in an administrative arrangement. Article 9.1 of this Administrative Arrangement sets forth these conditions. Under Article 9.1, a written application submitted to the agency of one country will protect the claimant's right to benefits under the laws of the other country, provided the applicant expresses an intent to file for benefits in the other country when the application is filed. However, because an applicant may not be fully aware of benefit rights in the other country, Article 9.1 also provides that, in the absence of an expression of intent, the application will protect the claimant's rights in the other country if, at the time of filing, the applicant indicates that the person on whose record benefits are based has been covered under social security in the other country.

2. The provisions of the Agreement shall apply to an application for benefits only if the application is filed on or after the date the Agreement enters into force.

Article 9.2 requires that a person claiming benefits under the Agreement file an application either on or after the date the Agreement becomes effective. If a person files an application prior to this date, a new application will be necessary.

ANNEX C

REPORT TO CONGRESS ON THE FINANCIAL EFFECT OF THE U.S.-SPANISH SOCIAL SECURITY AGREEMENT

The attached tables present estimates on the effects of the proposed U.S.-Spanish social security agreement on the income and expenditures of both country's social security programs and the number of people who will be affected by the agreement. The estimates are based on the assumption that the agreement becomes effective on January 1, 1987.

Table 1 shows the estimated additional costs that would accrue to each country's system as a result of the agreement. These costs would occur because (1) each country would pay additional benefits to certain people who have worked in both the United States and Spain but who could not qualify for benefits from one or both without the agreement, and (2) each country would lose social security tax income from workers who were previously required to contribute to both systems for the same work but who would contribute only to one system under the agreement.

Table 2 shows the number of people who would become eligible for a partial OASDI benefit from the United States or Spain under the agreement. Also shown in Table 2 is the number of employees in each country who, along with their employers, would no longer be subject to dual Social Security coverage and taxation.

ADMINISTRATIVE ARRANGEMENT

Article 5

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 9 of this Administrative Arrangement shall inform the liaison agency of the other Contracting State of this fact without delay and provide such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

2. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the worker, the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

3. In the case of an application for disability benefits, the agency shall transmit all available medical evidence concerning the disability.

4. The agency of either of the Contracting States which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

ANNOTATIONS AND COMMENTS

Article 5.1, 5.3 and 5.4 outline the procedures to be followed by both countries for the exchange of pertinent information needed to process claims filed under the Agreement.

Article 5.2 deals with the verification of claims information. Both U.S. and Spanish laws require that certain information about individuals claiming benefits be verified (e.g., age and family relationship to the worker) before the claim can be approved. Article 5.2 provides that when a claim for benefits under the Agreement is filed in one country, the agency of that country will verify the relevant information and inform the agency of the other country of its findings. The liaison agencies will agree upon the specific types of information which must be verified. The purpose of this provision is to expedite the claims process by avoiding the duplication of effort which would result if the agencies of both countries were required to verify the same information. Although an agency may accept the findings of the other agency concerning the accuracy of information, it may at its discretion request documentary evidence to support those findings.

ADMINISTRATIVE ARRANGEMENT

ANNOTATIONS AND COMMENTS

Chapter IV

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon by the Contracting States pursuant to Article 2 of this Administrative Arrangement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 6 provides that the agency of one country may, upon request, furnish claims-related information to the agency of the other country in accordance with agreed upon procedures. Such procedures will be agreed upon by the liaison agencies and will be consistent with the governing statutes of both countries.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a manner to be agreed upon.

Article 7 provides for an exchange of statistics concerning the number of coverage certificates issued pursuant to Article 3.1 of this Administrative Arrangement, and the payments made to beneficiaries under the Agreement.

Article 8

1. When, in the judgment of an agency, medical evidence is necessary to determine or review under its laws the disability of an applicant, that agency may request a new medical examination, using a form to be established for such purpose.

2. The costs incurred for the medical examination provided for in the preceding paragraph shall be reimbursed by the agency that requests the examination.

Article 8 provides that where a medical examination is necessary to establish eligibility for or continuing entitlement to benefits under one country's system, and the claimant or beneficiary resides in the other country, the agency of the country of residence will, upon request, arrange for the examination at the expense of the agency requesting the examination.

ADMINISTRATIVE ARRANGEMENT

Article 9

The agency of each Contracting State shall pay benefits due to beneficiaries under the Agreement without recourse to the agency of the other Contracting State.

Article 10

Unless otherwise authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Arrangement shall enter into force on the same date as the Agreement and shall have the same period of validity.

Done at Madrid on September 30, 1986, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of
the United States of America:

For the Government of
Spain:

Manuel Chaves Gonzalez

ANNOTATIONS AND COMMENTS

Article 9 provides that any benefits payable by one country to beneficiaries in the other country will not be sent to the agency of the other country for disbursement to the beneficiaries (as is the practice of some countries under their international agreements) but will be paid directly to the beneficiaries.

Both the United States and Spain have statutes and regulations that provide strict safeguards for maintaining the confidentiality of information pertaining to individuals which is in the possession of their respective Governments. In the United States these statutes include the Freedom of Information Act, the Privacy Act, the Tax Reform Act of 1976, the Government in the Sunshine Act, and pertinent provisions of the Social Security Act and other related statutes. Article 10 provides that personal information pertaining to an individual which one country furnishes to the other under the Agreement will be protected in accordance with the applicable provisions of the other country's privacy and confidentiality laws.

The Administrative Arrangement will enter into force on the same date as the Agreement and will remain in effect for the same period as the Agreement.

Table 1.--Estimated additional costs to the U.S. and Spanish social security systems under a proposed totalization agreement between the two countries
(In millions)

	Fiscal year				
	1987	1988	1989	1990	1991
Additional costs to the U.S. Social Security system:					
Increase in OASDI benefit payments	(1/)	(1/)	(1/)	$1	$2
Reduction in OASDHI tax contributions	$1	$3	$4	4	4
Total	1	3	4	5	6
Additional costs to the Spanish social security system:					
Increase in benefit payments	(1/)	(1/)	(1/)	1	2
Reduction in tax contributions	2	5	6	7	7
Total	2	5	6	8	9

1/ Less than $500,000.

Table 2.--Estimated number of persons who would be affected by a proposed totalization agreement between the United States and Spain

	Fiscal year				
	1987	1988	1989	1990	1991
Number of persons receiving a totalized OASDI benefit based in part on employment in Spain under the proposed agreement (in current-pay status at mid-year)	(1/)	100	100	200	300
Number of persons receiving a totalized Spanish benefit based in part on employment in the United States under the proposed agreement (in current-pay status at mid-year)	(1/)	100	100	200	300
Number of U.S. employees in Spain who, along with their employers, would no longer make tax contributions during the year to the Spanish social security system	500	750	850	900	900
Number of Spanish employees in the United States who, along with their employers, would no longer make tax contributions to the OASDHI Trust Funds	350	500	600	600	600

1/ Fewer than 50.